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ABSTRACT

In recent years, many debates have concentrated on which level of government is most appropriate to adopt a given policy. One suggestion is that fiat power in debate be limited to actions of the federal government. In debate, it must often be decided who should attempt to solve the problem. Too often, debaters forget the real-world limitations on agents, whether these are private citizens or the federal government. It is crucial to isolate the agent of an argument in a debate and to allow the agent powers that are real. The use of fiat is weak for the following reasons: there is no real-world counterpart to the all-powerful policy maker with universal fiat power; it would destroy debate at its logical conclusion because anything could be fiated by anyone; it produces poor debates because negative teams have had a tendency to run counterplans at the state level that merely duplicate affirmative federal plans; and there are time constraints on debate making it difficult to argue both the merits of an appropriate action and who the agent should be. The debate judge should assume the role of the agent in the assigned resolution and fiat action should be limited to federal government action. (TJ)

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THE AGENT IN ARGUMENT

TOWARD A THEORY OF FIAT

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THE AGENT IN ARGUMENT
TOWARD A THEORY OF FIAT

In recent years, there have been a large number of debates that have concentrated on what level of government is most appropriate to adopt a given policy. These types of arguments have taken many forms. Some negatives argue that an affirmative team must justify the federal government as the level of government that adopts the affirmative plan.[1] Other negatives argue that current state programs should be expanded. In the past few years, negatives have even resorted to counterplans that adopt the affirmative plan at the state level.[2] The assumption behind these arguments is that the judge in a debate round should consider not only whether a given policy should be adopted, but what level of government should adopt the policy.

In the area of the counterplan, this assumption is beginning to be questioned. Lichtman and Rohrer suggest, in passing, that a negative team may be limited to proposing counterplans at the federal level:

> An individual or governmental unit can reasonably be asked to reject a particular policy if an alternative promises greater net benefits. If, however, a counterplan must be adopted by another individual or unit of government, the initial decisionmaker must consider the probability that the counterplan will be adopted. Debate propositions often affirm that a particular policy should be adopted by the federal government. Even if adoption of this policy by the individual state governments would be more beneficial, a reasonable critic would still affirm the resolution if state adoption were highly unlikely.[3]

The possibility that a negative team arguing for state action may be going beyond its legitimate bounds was further suggested by Angland:

> . . . there are many differences in the way policy-makers would treat counterplans and inherency arguments depending upon whether they viewed themselves as 'czars' that transcend particular branches of government or decisionmakers sitting in the place of a particular governmental institution. To illustrate, a czar might permit the negative to fiat repairs by any level of government, while a policymaker who viewed himself as the federal government [would limit the negative team to fiating repairs at the federal level] - repairs by any other levels being evaluated in probabilistic terms. . .[4]

Neither of these two treatments of the limits to fiat power discussed the rationale behind limiting the fiat power of the negative team to actions taken by the federal government; rather each position was merely discussed as a possible limitation on the negative team. Such a limitation would, however, have a significant impact on contemporary theory, with ramifications in the areas of inherency, counterplan theory, and justification arguments. This paper will attempt to develop one justification for limiting the fiat power to actions of the federal government.

I

In examining any problem area, there are two components that are important to any critic: the nature of the problem, and an agent from whose view the problem is to be viewed. The first component consists of the analysis of the problem: does a problem exist; why does the problem exist; and possible outcomes of different policies that have been proposed to solve the problem. The second component refers to the agent that is supposed to address the problem.[5] This is the specific actor who must attempt to solve the problem. By agent, I do not mean whether the person addressing the problem is a policy maker, a hypothesis tester, or a stock issues judge; these are merely potential ways an agent can view a problem. By agent, I refer to the person

who makes the decision as to what should be done, whether this person be a President, a judge, or a private citizen. It is the individual through whose eyes we examine a problem area.

In many cases, what may be thought of as one problem may actually be several problem clusters, each of which consists of a common problem, and a different perspective by which to view the problem. For example, in discussing the energy crisis, the nature of the problem may be quite constant, but the approach that is taken to the problem depends on both the nature of the problem and the person who is looking at the problem. One set of policy options will be available to the federal government, another to the state governments, and a third to individual citizens. Solutions open to one agent often will not be open to another agent. An individual, for example, may decide to decrease excess driving to help stop the energy crisis; that option is not directly open to the federal government. The federal government has the option of rationing gas, closing roads, encouraging mass transit, or regulating energy producers; options not open to the individual.

What is critical is not that there are many options open to the solution of a problem, but rather that only a few of the many potential options are open to any one agent in addressing a problem. As an individual citizen, I may thing that the real solution to the energy crisis may be to break up large oil companies, but since I have no control over that action, I must choose among the alternatives open to me. While it would be desirable to be able to control everything, one must recognize one's limitations and act within the limits that are externally imposed:

> A soldier may be free to fight or desert or commit suicide, but he is not free not to have been a soldier. The wish to have been in a different situation can never be more than empty because impossible. It can never be an intention, a plan of possible action. One's past is determinant - one's present situation is determined by that past. Human freedom must operate within the bounds of one's situation.[6]

In facing a problem, one is forced to admit the limitations imposed by one's position in life. Human beings have limited choices; confronted with a problem these limitations should be recognized, and the best policy should be choosen in light of those limitations. Any disputant should recognize not only the nature of the problem, but the limitations of the person making the choice.

It is useless to argue that an action should be taken by any set of individuals besides those people being addressed. It may help us vent our frustrations, but it does nothing to help solve the problem, and it may even be counterproductive, since it shifts our attention away from constructive actions we can take. At the governmental level, like the personal level, this concept is important. Regardless of how strongly Congress may think that the state governments should fund welfare programs, if the states are not funding welfare programs and the federal government views welfare programs as being desirable, the federal government must act to fund welfare on its own, for the only actions that Congress can control are federal programs.[7] We can speculate all we want about how things should be in an ideal world, but in the end, we can only control our own acts. The result is that we must decide which alternative (s) of those available to us should be choosen. The statement, "Congress should do X" does not necessarily deny the statement, "the states should do X", since in the first case

the statement is from the perspective of Congress, and in the second, the statement is viewed from the perspective of the states. In both cases, the act can only be evaluated with respect to other policy options open to the agent.

The failure to isolate the agent of an argument is frequently made in public debate. One of the main arguments made against federal civil rights legislation, for example, was that the legislation should be passed by the states, not the federal government; the federal government should not assume a state responsibility. Regardless of the merit of this argument, a policy maker at the federal level did not have the option of passing the legislation at the state level. Giving that the states were not passing civil rights legislation, the federal policy maker had to decide whether the disadvantage of violating state's rights outweighed the advantages of passing civil rights legislation. In this case, the federal government choose to act. In any situation, the policymaker must limit discussion to the options open to him/her, not to all possible alternatives open to all individuals.

Henry David Thoreau makes a similar argument in the essay, "On the Duty of Civil Disobedience."[8] When the government conducts an unjust war, or implements unjust policies, it is not enough to just sit and discuss what the government should have done; the citizen, must act to alter the policy. This is not done by fiating a new policy, but is done by recognizing the limitations of the citizen, and selecting those actions that the citizen feels are justified. The emphasis is not on the best policy in the abstract (although that may influence whether a citizen decides to disobey a law), but rather on the immediate choice that an individual makes.

One always acts realizing the limitations of one's self;

> Each man ties himself to himself from the moment in which he accepts this situation as his, in which he formulates this implicit relation to himself that has already constituted him in his presence to the world.
>
> The first consequence of these remarks is that each solution is simultaneously provisional, individual, and practical: this means that its author cannot rest in the choice he has made in its regard, that he must not ask it of someone else, and finally that he will derive his consistency only from the unfolding of his efforts in the world.[9]

The arguments will not change the reality of my existence. When I attempt to act, I will be limited to those actions that my position allows me to take. It is no more legitimate to argue that a judge should view options not available to the judge due to her/his position than it would be to suggest to a lunatic that he is the President of the United States. Both actions ignore the agent that is being asked to act. In the end, when one attempts to act in a role that is not appropriate, given one's position, the attempt is doomed to failure. The question becomes, what position should a judge in a debate be expected to fill?

II

In an attempt to solve many of the problems relating to the adoption of the affirmative plan, affirmative teams have introduced the term 'fiat' into debate rounds, and the negative teams have been quick to follow suit. Essentially, the use of 'fiat' allows a team to argue that its plan (or repairs or counterplan) can be enacted without an appeal to existing decision makers. Presumably, with the use of fiat, the plan can mysteriously come into existence tomorrow, without any need to discuss exactly how the plan will be adopted. This use of fiat allows the debate to focus on the merits of the resolution, rather than the way the

resolution could be adopted. By extention, the use of the fiat has been used to cover actions at the federal, state, local, and even international level. This would imply that the judge is a type of agent with the power to fiat programs at all levels of government.

While the use of the fiat has some justification in that it eliminates extraneous arguments relating to how the plan will be adopted, as opposed to whether a plan should be adopted, it leads to a view of the judge that is undesirable, in that it allows the judge to choose between different agents to adopt a policy. This use of fiat has four weaknesses.

First, there is no real world counterpart to the all-powerful policy maker with universal fiat power. The orientation to a problem (or the agent) is of critical importance in deciding what policy should be adopted. The universal fiat allows this factor to be ignored, and thus causes debaters to ignore this critical concept in argumentation. This can only harm the decision making process. Never do any real world decision makers have control over more than one level of government, except indirectly. Thus, an activity that is designed to train individuals in decision making does so by excluding one of the critical variables in policy making: the limitations imposed on policy makers by the nature of the agent choosing policy.[10] An appropriate role for the judge would be to place the judge in a position that corresponds to a real world decision maker. This is especially true given the emphasis placed in speech on audience analysis. We tell our students that they must adapt to an audience, but in debate we direct our arguments at an audience that does not, and

can not, exist.[11]

The second weakness of this use of fiat power is that, taken to its logical conclusion, it would destroy debate. For the fiat to be a legitimate construct, there must be limits on what actions can be fiated into existence. To allow unlimited fiat would allow for gross abuse of the concept. For example, given the ability to fiat action by government, why not extend the ability to fiat individual action, or changes in the laws of nature. These extentions of fiat power make debate worthless. The crime problem can easily be solved by fiating that all criminals become nice people. The pollution problem can be solved by fiating that the laws of nature be changed so that SO_x becomes a healthy emission. Poverty can be eliminated by fiating that rich industries give their money to the poor people.

I am sure that it will be argued that these examples are extreme, and that no judge would allow these minor repairs. Even that argument accepts the premise that there must be some restrictions placed on fiat power; it is not unlimited. The question becomes, how should the fiat power be limited? Normally the fiat power is arbitrarily limited to governmental organizations, but this limitation is arbitrary - it could just as logically be extended to industry, or limited to one level of government. As a clear implication of this, the limitation of debate to the consideration of actions by one agent is at least as reasonable as current uses of fiat being limited to all governmental agencies. If anything, the limitation of the fiat to the federal government is a more reasonable limitation, since clearly the policymaker must be able to act as the federal government (or else the reso-

lution could not be passed); any other actions are made possible only through the bias of the judge, not by anything that can be inferred by the resolution.

The weakness of this view of fiat power is even greater. To give a judge the power of fiat requires that a judge be able to change both laws of nature and individual behavior. Thus, to argue that the three examples cited earlier are unreasonable is to concede that the use of the fiat is unreasonable. Consider what a fiat entails. In order for a proposal to be fiated into existence, at a minimum, the law has to suddenly appear in the legal records, without human help, which is quite a change in the laws of nature. Even that is not enough. Since people may see the law, but ignore it since they were not involved in the passing of the law, the judge must be able to change the minds of all Americans into believing that this law is legitimate. This is quite a task, since it involves changing not only the belief of all Americans about the existence of a law, but also the entire metaphysical nature of the ways that laws come into existence, for they are expected to obey a law that was not there a day before, and which was adopted by the waving of a magic wand, or the signing of a ballot. Surely, if the judge can convince all Americans that a new law exists, convincing a few criminals to go straight would be a feat hardly worth bragging about. To allow the use of the fiat, as it is currently used, then, is to give the judge more power than would be required to solve the problem directly by changing the minds of individuals in society (and indeed, requires that the judge has this power). Thus, placing the judge in the place of a policymaker with unlimited fiat power is unreasonable.

The third weakness of this approach is that it produces poor debates. This has been evident in recent years. There has been a tendency for negative teams to run counterplans at the state level that, in reality, are nothing more than the affirmative team's plan with minor modifications, adopted at the state level. While this may be desirable if the debate emphasized the distinction between federal and state programs,[12] many debates merely emphasize the advantages of the minor difference in the policies. There is no inherent reason why the federal government could not adopt the minor change. The result is that the debate turns into a discussion of minor plan differences, rather than the merits of the resolution. Little would be lost if state level counterplans were excluded from debate.

A final argument against allowing the negative to stress multiple levels of agents is that there are time constraints on debate. Although this is not a view I am sympathetic to, many people use it against other debate practices, and it clearly applies to this tactic. There is a finite time allowed in a debate round. To debate both which agent should act, as well as what action should be taken often will result in neither issue being debated adequately: "The complex and interrelated arguments and values inherent to any single policy decision are difficult to fit into our restrictive time frame."[13] We should, consistent with this view, discuss only the appropriate agent or the appropriate act, not both. Since the role of the judge in the real world is not a debatable issue in most cases, it is logical that only the act to be taken should be debated in a round.

III

The question becomes, what agent should a judge become in a debate round? I would argue that the judge should adopt the role of the agent specified in the resolution. The debaters should argue as they would if they were arguing before the agent in the resolution. Thus, if the resolution calls for Congressional action, the policymaker should be viewed as Congress. If the topic calls for international action, the policymaker should be one controlling an international organization.[14] The resolution thus serves the function of designating the agent that is being addressed. Much as we teach students in speech classes to adapt their arguments to a specific audience, this approach argues that the audience is specified in the resolution as a real world audience, not a hypothetical construct that exists only in academic debate. For a resolution, "resolved, that the United States should increase its troop strength in Europe," a counterplan of having the U.S.S.R. withdraw from Eastern Europe would be rejected, since the issue would be, given Soviet policy, what would the United States' best policy in Europe. Counterplans increasing the troop strength of Germany or England would also be rejected.

The judge would thus role play the agent in the resolution. The judge is then asked to decide how (s)he would vote if (s)he were in the place of the agent, and had only the information in the round on which to base a decision. The only thing the ballot signifies is that the judge, based on the arguments in the round, thinks that the agent should or should not adopt the resolution. All arguments are addressed to the judge as if the judge were the actual agent in the resolution.[13]

This position has several implications. It decreases the impace of any minor repairs or counterplans by any agent besides the one specified in the resolution. While negatives can still argue for minor repairs and counterplans at the state level, they must show they will be adopted. Justification arguments are also eliminated. The judge is the federal government, deciding what path to follow. Questions about why the agent has not acted in the past (motivational inherency) become ad hominum attacks; the real question is what I as an agent should do in the future, not how or why I have sinned in the past.

This is not an attempt to eliminate counterplans or inherency arguments. Rather, it is an attempt to limit these arguments to acts by the federal government. A guaranteed annual income program can still be counterplanned by a program of in-kind benefits. Other counterplans can still be used. The aim of this paper is to alter the orientation of debate so that it reflects more accurately real world argument. In the real world, the agent is important, and one must recognize the limitations that one's position places on the choices available. The current use of the fiat in debate does not recognize this factor. Only by shifting the framework of the judge can a more realistic view of the nature of argument be guaranteed.

FOOTNOTES

[1]For an example of this type of justification argument, presented as a counterplan, see Stanley G. Rives (ed.), "Final Round of the National Debate Tournament," Journal of the American Forensic Association, X (Summer, 1973), 16-45.

[2]See "1977 Heart of America Final Round and Critiques: Macalester vs. Northwestern," Mimeographed, University of Kansas debate squad, 1977.

[3]Allan J. Lichtman and Daniel M. Rohrer, "A General Theory of the Counterplan," Journal of the American Forensic Association, XII (Fall, 1975), 74n.

[4]Joe Angland, in "National Debate Tournament, Booklet of Judges," Mimeographed, American Forensic Association, April 19-22, 1974, (n.p.)/

[5]The term agent comes (loosely) from Kenneth Burke, A Grammar of Motives, (Berkeley, California: University of California Press, 1969).

[6]Robert C. Solomon, From Rationalism to Existentialism: The Existentialists and their Nineteenth-Century Backgrounds, (New York: Harper & Row, Publishers, 1972), p. 273.

[7]Congress does have another option open to it. It could pass at the federal level a bill that forces (or encourages) state governments to pass laws. For example, the 55 mph speed limit was passed in this way; states were told that they would not receive federal money if they did not pass the speed limit, and that threat was strong enough to get the states to pass the law. A negative team arguing this type of program would have to show that this type of law was not topical, and that the states would comply with the law.

[8]Henry David Thoreau, "On the Duty of Civil Disobedience," in The Rhetoric of No, edited by Ray Fabrizo, Edith Karas, and Ruth Menimuir, (New York: Holt, Rinehart, and Winston, Inc., 1974), pp. 243-257.

[9]Francis Jeanson, "Moral Perspectives in Sartre's Thought," in Contemporary European Ethics: Selected Readings, edited by Joseph J. Kockelmans (Garden City, NY: Doubleday & Company, Inc., 1972), p. 293.

[10]This discussion has been directed toward the policymaker perspective. Similar problems are created even for the critic who views him/her self as a citizen testing a hypothesis. First, the citizen has no power to enact anything, and even if the citizen is allowed to speculate about policy (s)he has no power over, the second indictment of fiat power is true: there are no legitimate limits to fiat power (or potential policies or hypotheses to consider). Second, if the citizen is viewed as a voter, the problem is even worse. There is rarely a chance for a voter to vote on something as specific as a policy resolution, at least at the

federal level; in voting for a candidate the issues are never as clear as in a debate (federal vs. state enactment of a specific policy); the candidates usually differ on more than one plan. The only exercise of choice is a vote; a voter can never vote directlyy on which of two levels should act. In addition, the voter can only vote in one state level election, and thus must pass legislation affecting other states through the federal government.

[11]Perelman attempts to argue for a universal audience, and some may argue that this audience provides an appropriate audience for a debate (see Chaim Perelman and L. Olbrechts-Tyteca, the New Rhetoric: A Treatice on Argumentation /London: University of Notre Dame Press, 1969/). While the value of such a construct has been challenged (see Henry W. Johnstone's review of Perelman in Man and World, IV /May, 1971/, 224-229), it is not clear that Perelman's notion of the universal audience does run counter to my thesis. The universal audience is rational, but its view of the rational act would depend on the agent. A. J. Ayer makes a similar argument in his review of Perelman (Revue Internationale de Philosophie, N° 23-24 /1953/, 157-159): "There is here a distinction, not sufficiently marked by Perelman, between the principles themselves and the tactics one may use to secure their adoption. From a tactical point of view, it may be held, one is always addressing a special audience." (p. 158). Since academic debate is directed toward discovering the best tactic to use, the universal audience is not appropriate.

[12]This type of argument, while it may be interesting, has no real world value, since we are never in a position to make these types of choices.

[13]Robert V. Seltzer, "The Alternative-Justification Affirmative: Theoretical and Practical Problems," Journal of the American Forensic Association, XI (Winter, 1975), 132.

[14]A few debate topics do not specify the level of government that should act. In these cases, the affirmative should be able to specify the level of government that is the audience. It should be noted that, while the selection of an audience will restrict the options open to a judge, in choosing which policy is superior, the judge should adopt a utilitarian perspective, judging the policies based on their impact on all humans, not just the immediate audience.